

Employment Contracting Basics for the Nurse Practitioner

Lorie A. Brown, JD, MA, and Carolyn Dolan, JD, MSN

ABSTRACT

Finding the right position is a goal of every beginning nurse practitioner. After many long hours of study and clinical to achieve an advanced degree, the postgraduation pay-off is entering into advanced practice. Although the new nurse practitioner is anxious to join the nearly 200,000 already in practice, taking the time to weigh essential contract negotiation strategies before entering into an employment contract may prevent the dream of a perfect position from becoming a night terror.

Keywords: alternative dispute, arbitration, employment-at-will, fee for service, independent contractor, mediation, negotiation, productivity-based salary

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INTRODUCTION

Employment contracts offer many protections for nurse practitioners (NPs). Although they do not guarantee the perfect employment match, they minimize conflict(s) after hiring by putting the provisions “on the table” up front. For example, many states fall under “employment-at-will” provisions of law and, therefore, an employee may be terminated for no reason at all. However, an employment contract, if offered, provides specific protections *IF* its terms are properly negotiated.

The American Association of Nurse Practitioners estimates there are nearly 200,000 licensed NPs in the United States today.¹ The majority of NPs are in the workforce and many will utilize employment contracts. Although some contracts are casual, agreed to verbally or by a handshake or a wink and a nod, an employment contract is a legally binding document signed by the parties involved. It is constructed by specific terms of employment and memorialized in writing to delineate the responsibilities and rights of the parties.

Employment contracts are different from collaborative practice agreements. Collaborative practice agreements are required by states in which NPs cannot practice independently. Collaborative practice agreements usually address how the physician and NP will work together; how they will share practice

trends and responsibilities; how they will maintain geographic proximity; and how they will provide coverage during an absence, incapacity, infirmity, or emergency by the licensed practitioner.

An employment contract legally means a “promise for a promise” and frames the structure, limits, and expectations of the working relationship. Therefore, it is paramount that its terms and conditions are clearly understood and agreed to by both parties. Because the NP will be giving “their” word (promise) to perform or make good on their end of the employment bargain in expectations and conditions as outlined by the employer, all essential legal terms and obligations must be comprehended. Would anyone agree to do something without understanding what is expected? Accordingly, an NP should not agree to any of the terms of an employment contract that is not understood completely. Therefore, the first caveat is: Understand the terms and conditions before affirming. There should be no surprises.

In most cases, the employer and his/her attorney draft the initial employment contract and the NP then reviews the contract and suggests changes in any of its terms. When there is mutual agreement, the NP signs the contract. With this in mind, it must be realized that employment contracts are written by employers’ attorneys. Who looks out for the NP’s best interests? Often, no one is assisting or supporting

the NP in the process. The recommendation to an NP is to hire legal counsel to review the employment contract. Counseling should be provided to the NP along with negotiation on the NP's behalf to ensure a better outcome.

Generally, an attorney with experience in negotiation, contracts, business and health care, or employment law is recommended. An employment contract has been compared with marriage—a solid marriage takes time and effort.² Instead of being swept away in the heat of passion of pursuing an exciting career opportunity, the NP must think through each contract requirement, listen to counsel from their attorney, and know that with due diligence they can sign on the dotted line with confidence. A slight delay in getting to work is much better than the frustration and cost of *breach*.

Breach is a legal term for failure of one of the parties to a contract to fulfill one or more aspects of the “promises” or “conditions” of the contract as agreed. The NP may have little recourse if a problem occurs and could be forced to pay the employer, which is called indemnification, for a claim against them. The NP may also be charged legal fees associated with contract issues (attorney, court, filing fees) or could be forced to complete the employment obligations (performance). In most cases, the NP will not be in a position to pay the employer's costs for the damages (another legal term for losses converted to payment in money). Breach of contract has been compared with a bad divorce, as it can end in legal costs, excessive amounts of time lost, and personal stress. Preventing breach is most likely if the NP employment contract (hence referred to as the contract) is well constructed and well comprehended. There are several sections of a contract. The NP should understand each section to negotiate the best outcome.

SECTIONS OF THE NP EMPLOYMENT CONTRACT

1. *Status*. First, the NP and the employer must agree that the contract is an employer-to-employee contract and not that of an independent contractor. When an NP is hired as an employee, the employer will deduct taxes from their paycheck. If an NP is an independent

contractor, the NP will be responsible to pay their own taxes and may also be personally liable for any malpractice. Physicians may prefer that NPs be hired as independent contractors for tax and liability purposes, but the terms of the contract must be carefully construed for this to stand if a question of authority arises.³ In cases of dispute, the court would look to the nature of the relationship between the professionals to determine whether the NP was truly independent or in an employee-employer situation. Other indications of the true employment status can be determined by how the NP is paid (salary, fee for service, incentives, productivity). A fee-for-service payment structure is based on payment for quantified or itemized treatments and not bundled care and is typical of an independent contractor agreement. In those cases in which there is a question as to whether the NP is an independent contractor, courts consider such factors as the amount of control the NP has over the type of work performed, the workplace setting, hours, schedule, and benefits. The more control the NP has over these elements, the more likely a court will determine that he/she is an independent contractor and not an employee. In questions of status or other matters, the words of the contract are carefully weighed to determine what the parties intended.

2. *Services*. It is important to know what services the NP will be providing and how frequently the NP will see patients. For example, if the NP is expected to see patients every 10 minutes, but knows that they will need 15 minutes to do an adequate job of assessing, planning, intervening, and evaluating patients and providing thorough documentation, the specific terms may need to be renegotiated in the contract. The NP needs to understand the health care expectations of the patient population: Will the NP's actions be supervised by a physician? Will the physician do the initial work-up and the NP the follow-up? If the patient population requires in-depth care, will an NP be able to perform an extensive assessment and have adequate time to implement

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